

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil Assessments Working Group
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DATE: August 21, 2007

SUBJECT: Civil Assessment Programs and Revenues (Action Required)

Issue Statement

Judicial Council determination is needed regarding civil assessments, including a growing revenue shortfall, allocation of civil assessment revenue, and aspects of the statewide civil assessment program.

This item presents recommendations related to (a) standardization of civil assessment programs statewide, (b) distributions of civil assessment revenues, and (c) allocation of reductions to trial courts as a result of Assembly Bill (AB) 139 (Stats. 2005, ch. 74), in which counties' contributions to offset a \$31 million General Fund reduction has been reduced and will eventually be eliminated over a five-year period that began in fiscal year (FY) 2005–2006.

Background

The Enhanced Civil Assessments Working Group, a collaborative working group consisting of judicial officers, court administrators, and Administrative Office of the Courts (AOC) staff, was established in late FY 2004–2005 for the purpose of developing recommendations for implementing AB 139 and establishing a statewide civil assessments program. While most of the working group's recommendations approved by the council were implemented over the course of FY 2005–2006, due to limited and inadequate revenue, cost recovery and implementation information available at the time, the Enhanced Civil Assessments Working Group chose in early FY 2006–2007 to defer for one year making final recommendations related to the ongoing revenue shortfall to the Trial Court Trust Fund that will reach \$31 million in FY 2009–2010, the sharing of civil assessment

revenue between AOC and the courts, and statewide uniformity of civil assessment programs.

In the Budget Act of 2003, the General Fund appropriation to the Trial Court Trust Fund was reduced by \$31 million, and all 58 counties were obligated to contribute \$31 million to the Trial Court Trust Fund to offset the shortfall.

In addition, AB 1759 (Stats. 2003, ch. 159) provided that the AOC and the California State Association of Counties (CSAC) were to propose to the legislature on or before January 1, 2005, a clear designation as to who receives undesignated fee revenues including revenues related to civil assessments imposed pursuant to Penal Code (PC) section 1214.1, with the ongoing changes to go into effect on July 1, 2005. In 2005, the AOC and CSAC reached a compromise on civil assessments and undesignated fees, the major components of which are as follows:

- The maximum civil assessment was raised from \$250 to \$300;
- Civil assessments are to be designated as Trial Court Trust Fund revenue;
- Counties no longer would receive civil assessment revenues, but each county received a reduction to their Fine and Forfeiture Revenue Maintenance of Effort (MOE) payment in an amount equal to the net civil assessments they received in FY 2003–2004 (referred to as the MOE buyout);
- The \$31 million obligation of counties to be reduced and eventually eliminated over a five-year period starting in FY 2005–2006 (declining annual payments of \$20 million, \$15 million, \$10 million, \$5 million and \$0); and
- Beginning in FY 2005–2006, courts progressively assume the county \$31 million obligation (\$11 million in 2005–2006, \$16 million in 2006–2007, \$21 million in 2007–2008, \$26 million in 2008–2009, and \$31 million in 2009–2010 and thereafter.)

AB 139, effective July 19, 2005, incorporated the AOC and CSAC proposal and agreement to resolve longstanding differences related to undesignated fees and redirected civil assessment revenue from the counties to the courts.

In FY 2005–2006, the Enhanced Civil Assessments Working Group met to make recommendations regarding (a) the implementation of AB 139 and (b) the establishment of a statewide enhanced civil assessments program. At the August 16, 2005, Judicial Council business meeting, the council adopted the working group's recommendations regarding a temporary approach to addressing issues related to civil assessments, including the following:

- Allocate to courts one-hundred percent of net civil assessment revenue (i.e., gross revenue less deduction for cost recovery pursuant to PC 1463.007) remitted to the Trial Court Trust Fund above the county MOE buyout amount;
- All courts to be reduced a prorated amount of the overall statewide \$11 million reduction in FY 2005–2006 (part of eventual ongoing \$31 million reduction.) This adjustment was one-time only and to be reviewed again in FY 2006–2007;
- Allocate a \$5.45 million reduction associated with a Governor’s veto of technology funding (half-year in FY 2005–2006, full year amount of \$10.9 million in FY 2006–2007 and thereafter) utilizing a methodology based upon the Resource Allocation Study (RAS) funding model;
- Other undesignated fee revenues to be used to fund the reimbursement of forensic evaluation costs and other programs; and
- Courts benefiting from certain other undesignated fees were given a baseline adjustment equal to the revenue they retained in FY 2003–2004.

In FY 2006–2007, the working group submitted recommendations to the Judicial Council at its October 4, 2006, meeting. However, the working group chose to consider FY 2006–2007 as an additional implementation and transition year and recommended that the \$16 million General Fund shortfall to the Trial Court Trust Fund in FY 2006–2007 be allocated as a reduction on a pro-rata basis to all courts.

This report presents final recommendations from the renamed Civil Assessments Working Group for addressing the outstanding issues identified above. The attachment to this report displays the estimated allocation reductions by court of the statewide \$21 million shortfall in FY 2007–2008, if the FY 2006–2007 ending base budget were used (see attachment.) The recommendation of the working group, as discussed below, is to base each court’s reduction on their share of the current-year beginning base budget, which is not known at this time due to the absence of a state budget.

Recommendations

Allocation of Ongoing Revenue Shortfall

AOC staff and the Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, recommend that the Judicial Council:

1. Allocate to all courts based on each court’s share of the beginning statewide base budget for the applicable fiscal year the growing revenue shortfall to

the Trial Court Trust Fund of \$21 million in FY 2007–2008, \$26 million in FY 2008–2009, and \$31 million in FY 2009–2010 and thereafter, related to reduced county MOE payments.

Rationale for Recommendation

The working group's recommendation is submitted for the following reasons:

- The method is fair and equitable as the reduction is absorbed by all courts based on the size of each court's budget each year;
- the method is transparent and stable;
- the method is consistent, maintaining the approach that has been used in FY 2005–2006 and FY 2006–2007; and
- the method acknowledges that the revenue shortfall is an issue that is independent of civil assessment revenue.

Alternative Actions Considered

Two alternatives were considered: a) allocate the shortfall to each court based on its share of statewide gross civil assessment revenue for a given single base year or average of multiple base years, and b) allocate the shortfall to each court based on its share of gross civil assessment revenue less the county buyout amount. Neither of these two alternatives are recommended since the reduction is to the Trial Court Trust Fund as a whole, and from which all courts receive funding whereas not all courts have a civil assessments program and not all courts have a county buyout because they either benefited 100 percent from civil assessment revenues or established a civil assessment program after the compromise on civil assessments was reached with CSAC and the counties. These two alternatives are inconsistent with the methodology approved by the council during the last two years.

Comments From Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.

Distribution of Civil Assessment Revenue

AOC staff and the Civil Assessments Working Group, with ratification by the Trial Court Budget Working Group, recommend that the Judicial Council:

2. Direct the Administrative Office of the Courts to continue the current practice of allocating to courts one hundred percent of net civil assessment

revenue (i.e., gross revenue less deduction for cost recovery pursuant to PC 1463.007) remitted to the Trial Court Trust Fund above the county civil assessment buyout amount.

Rationale for Recommendation

Since FY 2005–2006, when civil assessment revenue collected pursuant to PC 1214.1 was required by AB 139 to be remitted to the Trial Court Trust Fund, trial courts have been allocated 100 percent of net civil assessment revenue remitted to the Trial Court Trust Fund above the county civil assessment buyout amount as established in AB 139. This is the current practice approved by the council in the last two years.

Alternative Actions Considered

The working group considered the option of partially redirecting civil assessment revenue towards statewide technology projects and facility needs. However, as estimated, revenues in this program do not appear to be growing sufficiently to be able to support the redirection of any significant level of funding for this purpose, and given outstanding questions about the total statewide need, this approach was not recommended.

Comments From Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.

Uniformity of Statewide Civil Assessment Programs

AOC staff and the Trial Court Budget Working Group recommend that the Judicial Council:

3. Direct staff to draft and submit to the Policy Coordination and Liaison Committee, for consideration at their October 2007 meeting, legislation that would mandate a \$300 civil assessment, which is the current maximum, for failure to appear or failure to pay for courts that have a civil assessment program. Judges would retain the discretion to waive all or part of the assessment.

Rationale for Recommendation

The civil assessment authorized by PC 1214.1 currently allows courts to impose an amount up to \$300. The civil assessment imposed pursuant to PC 1214.1 may be applied for failure to pay and failure to appear in traffic and non-traffic infractions and misdemeanors as well as felony cases. During FY 2006–2007, of

the 53 courts that reported having a civil assessment program in the Civil Assessment and Cost Recovery Survey (June 2007), 49 were assessing \$300; 51 reported applying a civil assessment to traffic infractions for failure to appear and 46 reported applying a civil assessment to traffic infractions for failure to pay. The issue this raises is that an individual may be subject to a \$300 civil assessment in one county and a different amount for the same violation in a neighboring county.

Alternative Actions Considered

The Civil Assessments Working Group considered the option of making civil assessment programs mandatory for all courts as well as for all case types (for both failure to appear and failure to pay). Some working group members expressed strong concerns about telling other courts and their bench what to do in this regard. As a result, the Civil Assessments Working Group had approved the following recommendation:

The Judicial Council should direct staff to draft and submit to the Policy Coordination and Liaison Committee, for consideration at their October 2007 meeting, legislation that would mandate a \$300 civil assessment, which is the current maximum, on all traffic infractions for failure to appear or failure to pay for courts that have a civil assessment program. Judges would retain the discretion to waive all or part of the assessment.

The Civil Assessments Working Group's recommendation provides for some statewide uniformity among civil assessment programs while retaining judicial discretion, and would make mandatory what is already the practice in most courts for the most common type of civil assessments.

This recommendation was amended by the Trial Court Budget Working Group by eliminating the phrase "on all traffic infractions", in order to make clear that if a court imposes civil assessments that the uniform \$300 civil assessment applies to all cases types that are included in their particular civil assessments program and is not limited solely to traffic infractions. As amended, courts would retain discretion on which case type(s) to apply the civil assessment authorized by PC 1214.1 – i.e., for failure to pay and failure to appear in traffic and non-traffic infractions and misdemeanors as well as felony cases. The amended recommendation preserves the discretion of each court in determining which case types civil assessment will be applied. Judges would continue to retain the discretion to waive all or part of the assessment.

AOC staff recommends that the Judicial Council adopt the amended recommendation approved by the Trial Court Budget Working Group.

Comments From Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.

Exploring the Issue of Civil Assessments and Bench Warrants

AOC staff and the Civil Assessments Working Group recommend that the Judicial Council:

4. Direct that the Traffic Advisory Committee and the Criminal Law Advisory Committee explore the possibility of proposing legislation that would allow judges to apply both civil assessments and bench warrants in criminal cases for failure to appear or failure to pay.

Rationale for Recommendation

The working group expressed a desire to take a closer look at the possibility of proposing legislation to permit courts to utilize both bench warrants and civil assessments in appropriate situations. The working group's recommendation recognizes that such an effort will require additional analysis and discussion, and thus should be handled by the relevant advisory committees to the Judicial Council.

Under existing law, civil assessments are an alternative to bench warrants as a means of addressing a criminal defendant's failure to appear or failure to pay. If a court imposes a civil assessment for a failure to appear or a failure to pay, it is precluded from issuing a bench warrant for the same failure. There are limited situations in which a court might impose both remedies in a single case. For example, if a defendant was ordered to pay a fine, take an anger management course and appear in court to verify completion of the course, a court might impose a civil assessment for the failure to pay the fine, but issue a bench warrant for the failure to appear. However, in most situations, if the court has already imposed a civil assessment for a failure to pay or appear, it cannot also impose a bench warrant.

As a result, if the judges of a court wish to preserve the ability to issue a bench warrant in a particular category of cases, they will not authorize a civil assessment program for that case category. The working group's recommendation will allow further exploration of whether there are situations where it might be appropriate to use both remedies—bench warrant and civil assessment—to obtain compliance with a court order. The advisory committees will also be better able to debate the potential benefits and disadvantages of proposing the legislation described.

Alternative Actions Considered

Not applicable.

Comments From Interested Parties

Not applicable.

Implementation Requirements and Costs

Not applicable.

Attachment

Pro-Ration of FY 2007-08 \$21 Million Reduction on Initial Base Budget

	FY 2006-07 Ending Base Budget Col. A	Percent of Statewide Total Col. B	Pro-Rated Share of \$21 Million Col. C
Court			
Alameda	108,707,120	5.04%	(1,058,074)
Alpine	627,784	0.03%	(6,110)
Amador	2,787,122	0.13%	(27,128)
Butte	10,683,713	0.50%	(103,987)
Calaveras	2,455,028	0.11%	(23,895)
Colusa	1,722,337	0.08%	(16,764)
Contra Costa	52,735,006	2.44%	(513,283)
Del Norte	2,603,500	0.12%	(25,341)
El Dorado	9,330,699	0.43%	(90,818)
Fresno	45,599,667	2.11%	(443,833)
Glenn	2,273,617	0.11%	(22,130)
Humboldt	6,800,621	0.32%	(66,192)
Imperial	8,651,439	0.40%	(84,207)
Inyo	2,258,672	0.10%	(21,984)
Kern	40,999,097	1.90%	(399,055)
Kings	6,791,962	0.31%	(66,108)
Lake	3,571,554	0.17%	(34,763)
Lassen	2,407,166	0.11%	(23,430)
Los Angeles	636,849,222	29.52%	(6,198,616)
Madera	6,318,283	0.29%	(61,497)
Marin	18,476,130	0.86%	(179,833)
Mariposa	1,163,265	0.05%	(11,322)
Mendocino	6,249,128	0.29%	(60,824)
Merced	10,781,225	0.50%	(104,936)
Modoc	979,992	0.05%	(9,539)
Mono	1,502,156	0.07%	(14,621)
Monterey	18,410,626	0.85%	(179,195)
Napa	9,173,078	0.43%	(89,284)
Nevada	5,891,042	0.27%	(57,339)
Orange	181,640,472	8.42%	(1,767,953)
Placer	14,880,765	0.69%	(144,838)
Plumas	1,828,299	0.08%	(17,795)
Riverside	81,781,896	3.79%	(796,004)
Sacramento	90,420,530	4.19%	(880,086)
San Benito	2,808,662	0.13%	(27,337)
San Bernardino	94,231,413	4.37%	(917,178)
San Diego	180,774,432	8.38%	(1,759,524)
San Francisco	71,812,203	3.33%	(698,966)
San Joaquin	29,920,243	1.39%	(291,221)
San Luis Obispo	15,362,859	0.71%	(149,531)
San Mateo	43,528,889	2.02%	(423,678)
Santa Barbara	25,293,750	1.17%	(246,191)
Santa Clara	110,426,355	5.12%	(1,074,808)
Santa Cruz	14,462,375	0.67%	(140,766)
Shasta	9,973,270	0.46%	(97,072)
Sierra	613,506	0.03%	(5,971)
Siskiyou	4,503,690	0.21%	(43,836)
Solano	24,166,604	1.12%	(235,220)
Sonoma	27,063,149	1.25%	(263,413)
Stanislaus	18,796,286	0.87%	(182,949)
Sutter	4,644,936	0.22%	(45,210)
Tehama	3,690,824	0.17%	(35,924)
Trinity	1,252,471	0.06%	(12,191)
Tulare	18,559,256	0.86%	(180,642)
Tuolumne	3,519,801	0.16%	(34,259)
Ventura	40,486,872	1.88%	(394,069)
Yolo	10,154,500	0.47%	(98,836)
Yuba	4,153,075	0.19%	(40,423)
Total	2,157,551,635	100.00%	(21,000,000)